MONTANA LEGISLATIVE HISTORY

Chapter 594 19 81

Bill H 215 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	_____	C	Hearing Date(s)	_____	C
	1/23	✓ C		_____	C
	1	C		3/13	✓ C
	_____	C		_____	C
Date Out	1/27	✓ C		3/13	✓

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HOUSE BILL NO. 215

INTRODUCED BY KENDY

IN THE HOUSE

January 14, 1981	Introduced and referred to Committee on Judiciary.
January 29, 1981	Committee recommend bill do pass as amended. Report adopted.
January 30, 1981	Bill printed and placed on members' desks.
January 31, 1981	Second reading, do pass.
February 2, 1981	Correctly engrossed.
February 3, 1981	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 4, 1981	Introduced and referred to Committee on Judiciary.
March 14, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 17, 1981	Second reading, concurred in as amended.
March 19, 1981	Third reading, concurred in as amended. Ayes, 48; Noes, 0.

IN THE HOUSE

March 20, 1981	Returned from Senate with amendments.
April 7, 1981	Second reading, amendments concurred.

April 7, 1981	On motion rules suspended and bill placed on third reading this day.
Apr	Third reading, amendments concurred in. Ayes, 92; Noes, 3. Sent to enrolling.
April 9, 1981	Correctly enrolled.
April 10, 1981	Signed by Speaker.
April 11, 1981	Signed by President.
	Delivered to Governor.
April 17, 1981	Returned from Governor with recommended amendments.
April 21, 1981	Second reading, Governor's amendments concurred in.
	On motion rules suspended and Governor's amendments placed on third reading this day.
	Third reading, Governor's amendments concurred in. Ayes, 58; Noes, 6. Transmitted to Senate.

IN THE SENATE

April 22, 1981	Second reading, Governor's amendments concurred in.
	On motion rules suspended. Governor's amendments placed on calendar for third reading this day.
	Third reading, Governor's amendments concurred in. Ayes, 40; Noes, 0.

IN THE HOUSE

April 23, 1981

Returned from Senate. Sent to enrolling.

Reported correctly enrolled.

LC 1097/01

LC 1097/01

47th Legislature

HOUSE BILL NO. 215

INTRODUCED BY Keedy

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE DISTRICT COURTS AND JUSTICES' COURTS WITH CONCURRENT ORIGINAL JURISDICTION IN ALL CRIMINAL CASES AMOUNTING TO MISDEMEANOR; AMENDING SECTION 3-5-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-302, MCA, is amended to read:

"3-5-302. Original jurisdiction. (1) The district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity; and

~~(d) all cases of misdemeanor not otherwise provided for; and~~

~~(e)~~(d) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has concurrent original jurisdiction with the justice's court in all criminal cases amounting to misdemeanor.

~~(2)~~(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

LC 1097/01

~~(3)~~(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

~~(4)~~(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days."

-End-

HB 215

March 14, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

t House Bill No. 215 be amended as follows:

Page 1, lines 17 through 18.
lowing: line 16
ert: stricken language
tter: the subsequent subsection.
Page 1, line 22.
lowing: "in"
ike: "all"
ert: "the following"

Page 1, line 23.
lowing: "misdemeanor"

ert: ":
(a) misdemeanors arising at the same time as and out of the same transaction as a charged felony;

(b) misdemeanors resulting from the reduction of a felony offense charged in the district court; and

(c) misdemeanors resulting from a jury finding of a lesser included offense in a felony case "

March 17, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendment to House Bill 215, third reading copy, as follows:

That the following amendment of the Senate Standing Committee on Judiciary be amended to read as follows:

3. "(c) misdemeanors resulting from a finding of a lesser included offense in a felony case"

(omitting the word "jury")

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

April 16, 1981

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill No. 215, "AN ACT TO PROVIDE DISTRICT COURTS AND JUSTICES' COURTS WITH CONCURRENT ORIGINAL JURISDICTION IN ALL CRIMINAL CASES AMOUNTING TO MISDEMEANOR; AMENDING SECTION 3-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE," without my signature and recommend the attached amendment.

As introduced, HB 215 provided district courts and justices' courts with concurrent jurisdiction in all criminal cases amounting to misdemeanor. The bill, however, was amended after introduction to provide for concurrent jurisdiction only in certain, specified instances. The title of the bill was not changed to reflect this amendment.

I am proposing an amendment to the title simply to make it reflect the content of the bill.

I urge your concurrence in this amendment.

Sincerely,

Ted Schwinden

TED SCHWINDEN
Governor

April 16, 1981

GOVERNOR'S PROPOSED AMENDMENTS TO HOUSE BILL NO. 215;
REFERENCE COPY, AS FOLLOWS:

1. Page 1, Line 6
Following: "IN"
Strike: "ALL"
Insert: "CERTAIN"

House JUDICIARY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
213	To broaden the discovery of witnesses and defenses in criminal cases.	1/14/81	Keedy	1/23/81	Do Pass 1/23/81	1/23/81
214	To remove the authority of defense counsel to request immunity from prosecution for a person in exchange for testimony.	1/14/81	Keedy	1/23/81	Do Pass 1/23/81	1/23/81
✓215	To provide district courts & justices' courts with concurrent original jurisdiction in all criminal cases amounting to misdemeanor.	1/14/81	Keedy	1/23/81	Do Pass As Amended 1/27/81	1/27/81
216	To define "sexual contact" as touching of another for the purpose of arousing or gratifying the sexual desire of either party.	1/14/81	Keedy	1/26/81	Do Pass 1/26/81	1/26/81
220	To preclude criminal or civil liability of persons donating food, etc., for free distribution.	1/14/81	Harper	1/26/81	Do Pass as Amended 1/27/81	1/27/81
248	To submit to the qualified electors an amendment to the Montana Constitution to require removal of a justice or judge failing to impose criminal sentence.	1/15/81	Gould	1/26/81	Do Pass 1/27/81	1/27/81

There were no opponents.

The committee did not ask any questions.

HOUSE BILL 214 REP. KEEDY, chief sponsor, stated House Bill 214 is to remove the authority of defense counsel to request immunity from prosecution for a person in exchange for testimony.

Under present law, the witness if often granted immunity regarding the material he has testified. That can have serious consequences if a person is granted immunity and then confesses to the crime. The defendant would be free to go because not guilty was the verdict.

This bill is intended to put the right and authority where it belongs.

TOM HONZEL, County Attorneys Association, supports this bill. This section of law gives prosecutors nightmares that this will happen. The prosecution or defense can ask for immunity, although it is usually the prosecution. HONZEL noted the court does not grant immunity just because the person has something to say. The court does check it out to make sure the request is a valid one. The problem is usually the defense calls the witness to the stand. The witness refuses to testify because of the 5th amendment. The person is given immunity and proceeds to confess to the crime. When that happens even if the person has lied, the most the court can use against him is perjury. HONZEL feels this bill should be given consideration by the committee.

There were no further proponents.

There were no opponents.

REP. DAILY asked if the judge has the authority for immunity. HONZEL stated yes.

There was no further discussion or questions on House Bill 214.

HOUSE BILL 215 REP. KEEDY, chief sponsor, stated this bill is to provide district courts and justices' courts with concurrent original jurisdiction in all criminal cases amounting to misdemeanors. It can happen that several matters arise out of the same transaction have to be filed out of the same crime. It is wasteful and inefficient. The courts should be flexible that felonies and misdemeanors in the same crime be placed in the same court level.

TOM HONZEL, County Attorneys Association, supports this bill. The Supreme Court has ruled that district courts do not have the

authority to try felony and misdemeanor cases both. Justice of the Peace Courts have the authority for misdemeanors and district courts cannot interfer.

HONZEL noted a case where the defendant ransacked a home. The woman who lived there was home at the time. The defendant slapped her around. The defendant was found guilty of burglary and assault. The Supreme Court ruled the jury could not even consider the assault because that should have been handled in the Justice of the Peace Court. In State v. Campbell the Supreme Court stated district courts could not try misdemeanor cases. EXHIBITS 2 & 3.

It is appropriate to give district courts the ability to handle misdemeanor cases. If there was a case where the jury found a person guilty not only of burglary but of criminal trespassing, which is a misdemeanor, it would be dismissed and go to a lower court. HONZEL feels it is appropriate for the district court to handle both cases.

HONZEL noted there maybe some concern of the district judges where someone wants to file everything in district court when that person is mad at the Justice of Peace. HONZEL does not feel the district judges would accept all misdemeanor cases, accepting only cases which would have both felony and misdemeanor charges.

MIKE MELOY, Montana Trial Lawyers Association, noted this bill is trying to address a problem of the system. MELOY stated it does not make sense to have a trial in district court for a felony and after that trial go to Justice of Peace and tell the same information and facts over again for the misdemeanor involved.

MELOY, although in support of this bill, feels it might be too broad. He gave the committee his suggestions. EXHIBIT 4.

There were no further proponents.

There were no opponents.

In closing, REP. KEEDY stated he would like to look over the amendments MELOY gave before they were incorporated into the bill.

REP. HUENNEKENS stated since this is an immediate problem why not make it effective on passage and approval. REP. KEEDY agreed to the statement.

REP. HUENNEKENS was concerned with flooding district courts with misdemeanors. He questioned if it would be possible to send cases back to the Justice of Peace Court if the district court determined it should be handled there. REP. KEEDY felt that was possible. HONZEL stated most district courts would not let lawyers get away with pulling that very much.

CHAIRMAN KEYSER questioned the language MELOY suggested. HONZEL stated the language would help solve the problem. KEYSER questioned reinstating language on line 21. MELOY replied he had intended to strike all of 2.

There was no further discussion on House Bill 215.

EXECUTIVE SESSION

The House Judiciary Committee went into Executive Session at 9:35 a.m. on January 23, 1981.

HOUSE BILL 5 REP. EUDAILY stated the subcommittee's recommendation was do not pass, and so moved it.

REP. HUENNEKENS asked why the motion since there is so much plea bargaining. REP. DAILY noted approximately 90% of the cases involved some type of plea bargaining. REP. EUDAILY stated the committee felt there was so much that would have to be amended in the bill that it would not reflect the sponsor's intent.

REP. CONN moved a substitute motion of reassigning the bill back to the subcommittee for amending and allowing REP. YARDLEY, sponsor, to be included in the subcommittee. The motion passed unanimously.

HOUSE BILL 159 REP. DAILY moved do pass. JIM LEAR told committee members the definition of the crime arson includes setting fire to an automobile or attaching an explosive device to it. In instances of most automobiles that are set on fire it would be seldom that a person would not be placed in a death or bodily injury situation. Most automobile fires could be placed under the arson law.

REP. IVERSON asked what the maximum penalty for criminal mischief was. JIM LEAR replied under 45-6-101 if the damage is less than $150 the penalty is $500 or six months in jail. If the damage is over $150 the penalty is up to, but not to exceed, ten years in jail. REP. IVERSON noted if burning a haystack would be criminal mischief. JIM LEAR stated yes. IVERSON noted if this bill was needed.

REP. MATSKO stated arson is the offense of knowingly and purposely burning someone else's property. It is not needed to prove you are trying to hurt someone. The fire itself is something that cannot be controlled quickly. REP. MATSKO feels there is a need for this law.

REP. CURTISS moved to amend line 13 and 14 striking "or other property" and inserting "personal property of another which is designed for human entry whether or not used for lodging, occupancy,

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 9:05 a.m.

HOUSE BILL 210 REP. MCLANE moved do pass.

REP. KEEDY moved to amend page 2, line 3 striking 45-9-102(3). The amendment passed.

REP. SEIFERT moved do pass as amended.

REP. DAILY moved to amend page 2, line 1 striking 45-5-104(2). REP. DAILY stated he does not believe negligent homicide should be designated as dangerous since the person did not mean to do it. The amendment passed with REP. HANNAH, REP. MATSKO and REP. KEEDY voting no.

REP. SHELDEN asked if alcohol would be included in this bill. REP. KEEDY stated no.

REP. BENNETT stated if this bill were passed the average prison term would be increased from 18 to 22.5 months. He does not feel the bill will be cost effective. REP. KEEDY stated this bill accomplishes many things. Nondangerous classification applies in the statute if a judge does not make the distinction.

REP. MATSKO stated 24% of the people coming into the prison are repeat offenders. If this bill lengthens their stay 4 1/2 months he does not know if there is that much of an impact or not. People automatically think a new prison will have to be built.

REP. SEIFERT moved do pass as amended. The motion failed 11 to 8. Those representatives voting no were: KEYSER, SEIFERT, BENNETT, EUDAILY, IVERSON, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE, YARDLEY, and BROWN. Those representatives voting yes were: CONN, CURTISS, HANNAH, MATSKO, ANDERSON, DAILY, KEEDY, and MCLANE. The vote was reversed to do not pass. Those representatives voting yes were: KEYSER, SEIFERT, BENNETT, EUDAILY, IVERSON, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE, YARDLEY and BROWN. Those representatives voting no were: CONN, CURTISS, HANNAH, MATSKO, ANDERSON, DAILY KEEDY and MCLANE. House Bill 210 did not pass.

HOUSE BILL 215 REP. CONN moved do pass.

REP. ANDERSON asked if the sponsor would object to an immediate effective date. REP. KEEDY stated no.

JIM LEAR read the amendment suggestions as proposed by MIKE MELOY.

After some discussion it was decided to not use the language as proposed by MELOY.

REP. YARDLEY moved to amend the title and add a new section providing for an immediate effective date. The motion passed unanimously.

REP. CONN moved do pass as amended. The motion passed with REP. SEIFERT and REP. KEYSER voting no.

HOUSE BILL 220 House Bill 220 was continued from the 1/26/81 meeting.

REP. CONN moved to amend line 1 inserting "(4) If the ultimate distributor charges any fee for the food received from a donor or gleaner, such fact shall not deprive the donor or gleaner of the immunity provided under this section."; and to renumber the subsequent subsection.

The motion passed unanimously.

REP. CURTISS moved do pass as amended. The motion passed with REP. SEIFERT and REP. TEAGUE voting no.

HOUSE BILL 248 REP. BROWN moved do pass. REP. TEAGUE questioned if the commission as organized has the expertise to judge the judges, and would this bill be constitutional.

REP. HANNAH stated he was in favor of the bill.

REP. BROWN moved to amend page 2, line 9, striking which and inserting may. REP. MATSKO did not feel that would coincide with the title. REP. BROWN withdrew his motion.

REP. YARDLEY stated this is a constitutional amendment. The voters become very confused and don't care after a while. This bill was amended last year to take out the confidentiality.

House Bill 248 passed with a vote of 12 to 6. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, HANNAH, MATSKO, ANDERSON, DAILY, KEEDY, TEAGUE, BROWN and MCLANE. Those voting no were: CONN, EUDAILY, ABRAMS, HUENNEKENS, SHELDEN and YARDLEY.

HOUSE BILL 273 House Bill 273 was continued from the 1/26/81 meeting.

REP. HANNAH moved do pass.

REP. BROWN moved to amend page 2, line 18 striking "or" and inserting "and". After some discussion REP. BROWN withdrew his

FORTY-SEVENTH LEGISLATIVE SESSION

SENATE

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 154	1/26/81	3/12/81	3/14/81				3/14/81		
HB 162	1/26/81	3/03/81	3/03/81				3/03/81		
HB 162	3/05/81	3/21/81	3/21/81				3/21/81		
HB 207	1/27/81	3/12/81	3/14/81						3/14/81
HB 208	2/18/81	3/12/81	3/17/81						3/17/81
HB 209	1/28/81	3/12/81	3/21/81					3/21/81	
HB 212	1/28/81	3/11/81	3/24/81				3/24/81		
HB 213	1/28/81	3/13/81	3/14/81				3/14/81		
HB 213	3/18/81	3/24/81	3/24/81				3/24/81		
HB 214	1/28/81	3/13/81	3/24/81						3/24/81
HB 215	2/04/81	3/13/81	3/13/81					3/13/81	
HB 220	2/04/81	3/03/81	3/21/81				3/21/81		
HB 246	2/04/81	3/03/81	3/21/81				3/21/81		
HB 254	1/29/81	3/04/81	3/04/81				3/04/81		
HB 273	2/07/81	3/04/81	3/24/81						3/24/81
HB 284	3/02/81	3/13/81	3/14/81				3/14/81		

Use a separate sheet for Senate, House Bills, and Resolutions.

CONSIDERATION OF HOUSE BILL 213:

TO BROADEN THE DISCOVERY OF WITNESSES AND DEFENSES IN CRIMINAL CASES.

Rep. Keedy, District 18, Kalispell, presented the bill, saying that it broadens the scope of pretrial discovery by making known all witnesses to both sides in the interest of getting at the truth.

Tom Honzel supported the bill on behalf of the County Attorneys Association.

Senator Mazurek asked if this bill represented an effort to include all the affirmative defenses, and if so, did it accomplish that purpose. Rep. Keedy replied affirmatively.

Senator O'Hara asked for a definition of "affirmative defense". Rep. Keedy said that it is the kind of defense a defendant would use when there is no argument over the commission of the act, but to show that there is a defense to what he did.

Senator Anderson asked if other states have done this same thing. Rep. Keedy did not know; David Niss said that he felt that some of them probably had done so.

CONSIDERATION OF HOUSE BILL 215:

TO PROVIDE DISTRICT COURTS AND JUSTICES' COURTS WITH CONCURRENT ORIGINAL JURISDICTION IN ALL CRIMINAL CASES AMOUNTING TO MISDEMEANOR.

Rep. Keedy presented the bill as a solution to jurisdictional problems regarding crimes involving both a felony and a misdemeanor.

Tom Honzel supported the bill on behalf of the County Attorneys Association because of the added efficiency in conducting trials of this nature.

Mike Meloy supported the bill for the Trial Lawyers Association, and submitted amendments (attached Exhibit A) which would give district courts jurisdiction only in certain cases.

Tom Harrison, representing the Montana Judges Association, supported the bill only with Mr. Meloy's amendments.

Rep. Keedy accepted the amendments.

DISPOSITION OF HOUSE BILL 215:

Senator S. Brown moved that House Bill 215 be amended as

shown on the attached Committee Report. His motion passed unanimously. Senator S. Brown then moved that the bill BE CONCURRED IN AS AMENDED, and this motion passed unanimously.

CONSIDERATION OF HOUSE BILL 214:

TO REMOVE THE AUTHORITY OF DEFENSE COUNSEL TO REQUEST IMMUNITY FROM PROSECUTION FOR A PERSON IN EXCHANGE FOR TESTIMONY.

Rep. Keedy presented the bill and described its intent as being that described in the title. He said that in his opinion the section of law affected by this bill would be repealed if House Bill 689 is passed. He stated that the defense lawyer should not have the right of granting immunity -- that it should be the prerogative of the prosecution -- and asked that this concept be included in HB 689 if it passes this committee.

Tom Honzel supported the bill on behalf of the County Attorneys Association, saying that on line 15 it states that the court "may require", and that he prefers this language to the "shall require" which appears in HB 689.

Speaking in opposition to the bill, Karen Mikota, representing the LWV, said that defendants should continue to be viewed as innocent until proven guilty, and that therefore defense lawyers should have the right to grant immunity.

In closing, Rep. Keedy said that a defense attorney's sole purpose is to exonerate his client -- not to find the truth -- and because of that fact he should not have the power of granting immunity.

Senator Mazurek pointed out that in any event the defense attorney can only suggest the granting of immunity, and that he would not like to see his right to make this suggestion removed.

Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 13, 19

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: Karen Mikata DATE: 3/13/81

ADDRESS: 406 N. Ewing

PHONE: 443-6287

REPRESENTING WHOM? LWV of Montana

APPEARING ON WHICH PROPOSAL: 214, 215, 99

DO YOU: SUPPORT? _____ AMEND? 215 OPPOSE? 214/99

COMMENTS: 99/ dealing with definition of convicted - possible change to what a defined sentence really is - how it's used against defend.

214/ takes rights to prove innocence out of defense counsels hands - can be very important to case.

215 - need to be sure court loads do not increase

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Mike Meloy DATE: 3/13/81

ADDRESS: HNA

PHONE: 4429430

REPRESENTING WHOM? MTLA HB 284 (OPPOSE)

APPEARING ON WHICH PROPOSAL: HB 215 $ (SUPPORT)

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit H

AMENDMENTS TO HB 215

1. Amend page 1, lines 17, 18 and 19, by reinstating the stricken material

2. Amend page 1, line 22, by striking "in all criminal cases" and inserting "in the following criminal cases"

3. Amend page 1, line 22, by striking the "." and inserting:

":

(a) Misdemeanors arising at the same time as and out of the same transaction as a charged felony;

(b) Misdemeanors resulting from the reduction of a felony offense charged in the district court; and

(c) Misdemeanors resulting from a jury finding of a lesser included offense in a felony case."